IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO. 924/2005
IN
WRIT PETITION NO.288/2005

1. Mr. Pedro Antonio Fernandes,
   Murrod Vaddo, Candolim, Bardez, Goa

2. Jeronimo Coutinho, Murrod Vaddo,
   Candolim, Bardez, Goa. ..... Applicants.

V/s.

1. The State of Goa,
   through Chief Secretary,
   Government of Goa.

2. The Goa Coastal Zone Management
   Authority, through its Member Secretary,
   Opp. Saligao Seminary,
   P.O. Saligao, Bardez, Goa.

3. The Village Panchayat of Candolim,
   Candolim, Bardez, Goa.

4. Angara Restaurant,
   Candolim through its Proprietor,
   Mr. Agnelo Fernandes,
   H.No. 888, Camoti Vaddo,
   Candolim, Bardez, Goa. ..... Respondents.

Mr. J. J. De Souza, Advocate for the applicants.

Mr. S. S. Kantak, Advocate General with Ms. R. Chodankar, Addl. Govt. Advocate for respondents No.1 and 2.

Mr. Nitin Sardessai, Advocate for the respondent No.3.

Mr. S. K. Kakodkar, Senior Advocate with Mr. C. A. Fereira, Advocate for respondent No.4.

Mr. Shivan Dessai, Amicus Curiae.

CORAM : A.P. LAVANDE &
N.A. BRITTO, JJ.

Date of reserving the Order :
8th March, 2006.

Date of pronouncing the Order :
19th April, 2006.

O R D E R : (Per A.P. LAVANDE, J.)

Heard the learned Counsel for the parties and learned amicus curiae. By this application, the applicants seeks leave to withdraw the Writ Petition No. 288/2005. Mr. De Souza, learned Counsel appearing for the applicants submit that the applicants are not interested in prosecuting the Writ Petition No. 288/2005 and, as such, they want to withdraw the same.

2. Mr. Kakodkar, learned Senior Counsel appearing for respondent No.4 submitted that it is the absolute right of the petitioners to withdraw the petition filed by them. According to the learned Senior Counsel, there is no public interest involved in the petition and the petition has been filed on the ground of violation of Building Regulations. The learned Senior Counsel further submitted that except when the petition is registered as a PIL Writ Petition, the petitioner is entitled to withdraw the petition filed by him, without disclosing any reason. Mr.

Kakodkar relied upon the judgments in the case of ***M/s. Hulas Rai Baij Nath v. Firm K.B. Bass and Co.,*** AIR 1968 SC 111 and ***Sarguja Transport Service vs. State Transport Appellate Tribunal, M.P. Gwalior and ors.,*** (1987) 1 SCC 5. Mr. Kantak, learned Advocate General also submitted that the petition is not a PIL Writ Petition and, therefore, the application for withdrawal of the petition deserves to be allowed. Mr. Sardessai, learned Counsel appearing for respondent No. 3 also adopted the submissions made by the learned Advocate General. Mr. Dessai, the learned amicus curiae submitted that the petition is in the nature of a public interest litigation as is evident from the averments made in the petition, more particularly paragraphs 20, 21 and 22 of the petition. Mr. Dessai further submitted that the petition having been filed in public interest and the same having been admitted, the petitioners are not entitled to withdraw the same and that too without disclosing any reason.

3. We have considered the submissions made by the learned Counsel and the learned amicus curiae. We have perused the Judgments relied upon by the learned Senior Counsel appearing on behalf of respondent No.4. No doubt that ordinarily a petition filed by a petitioner for enforcement of his rights can be withdrawn by the petitioner even without disclosing any reasons, however, subject to terms such as payment of costs, etc. The question which arises for

consideration in the present petition is whether the petition filed by the petitioners is in public interest or filed simply for enforcement of some rights in favour of the petitioners. In this connection, it would be appropriate to quote paragraphs 20, 21 and 22 of the petition. They read as under :

> " 20. The petitioners state that this petition is filed by the Petitioners to espouse the environmental cause in the Candolim Village and bring to the notice of this Honourable Court the degradation of the environment and gross violation of CRZ Notification taking place in Candolim Village. This petition is filed in the public interest wherein the general public were denied permissions for construction in CRZ III areas citing reasons that the statement is made before the Honourable High Court; but the same is granted to Respondent No.4 in gross violation of CRZ Regulation, the direction and the mandate laid down by the Honourable Supreme Court and the Honourable High Court.
>
> 21. The Petitioners submit that grave and irreparable loss will be caused to the environment if the Respondent No.4 is allowed to carry on the said illegal construction in blatant and gross violation of CRZ Notification.
>
> 22. The Petitioners state that the illegal construction is carried out in Goa. In the case of Indian Council for Enviro Legal Action V/s. Union of

India reported in JT 1996 (4) SC 263, the Honourable Supreme Court has directed that any allegation with regard to infringement of any of the Notifications dated 19/02/1991, 20/06/1991 and 18/08/1994 be filed in the High Courts having territorial jurisdictions over the areas in respect of which allegations are made. This this Honourable Court has jurisdiction to entertain his petition.

4. It is pertinent to note that the petition was admitted on 11.10.2005. This Court has ordered that the construction, if any, carried out by respondent No.4 on the property bearing Survey No.148/5 and 148/6 shall be at the risk of respondent No.4 and that such construction shall not create any equity in favour of the respondent No.4. Pursuant to the order passed by this Court, this Court appointed a Commissioner to inspect the land and submit the report about status of the land, existing constructed portion and the exact position of the construction. Pursuant thereto, the report has been submitted by the Commissioner. While admitting the petition, this Court observed that the case set up by the petitioner is that the illegal construction has been carried out by respondent No.4 in violation of CRZ Notification, thereby causing environmental degradation and as such requires consideration. The petition having been filed in public interest, it is not permissible for the petitioners to withdraw the petition and that too without disclosing any reason. It has not been seriously

contested on behalf of the parties that the petition, in the nature of public interest, cannot be withdrawn by the petitioner as of right, without satisfying the Court as to the reasons which prompt the petitioners to seek withdrawal of the petition. In our view, though the petition has not been registered as PIL Writ Petition, the same could not come in our way to hold that the petition has, in fact, been filed in the public interest as is evident from the averments made in the petition. Therefore, we do not find any merit in the application. The application is, consequently, dismissed. However, in the event the petitioners choose not to pursue the petition, the learned amicus curiae shall continue to assist the Court, till its disposal.

5. The application stands disposed of in the aforesaid terms.

A.P. LAVANDE, J.

N.A. BRITTO, J.

ssm.